IFW/DAC

RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS INVOLVING ISOTOPIC FUEL WITHIN A MATERIAL USING ~~ORTHOGONAL~~ ELECTRIC-FIELDS

Group Art Unit: 3641
Examiner: Palabrica, R.J.

Serial no. 09/ 748,691
Filed: 12/26/2000
This is a division of Serial no. 07/ 760,970
Filed: 09/17/1991

October 14, 2005

The Commissioner for Patents
Alexandria, VA 22313-14501

PETITION TO THE COMMISSIONER PURSUANT TO 37 C.F.R. 1.181

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents. This Petition is made to invoke his supervisory authority to correct a wrongful situation involving a Decision [Exhibit "A", attached, hereinafter "Decision"] dated May 9, stamped May 10, and initialled May 11, 2005, which has unfairly and erroneously denied Appellant's Petitions of November 26, 2003 and February 4, 2004. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 14, 2005.

3. Said Decision unfairly, erroneously and with impropriety denies Appellant's Petitions of November 26, 2003 and February 4, 2004 by unreasonably ignorings three (3) duly-submitted Appeal Briefs, two of Appellant's Petitions, and Declarations. This is inconsistent with the normal uniform standard of review. Therefore, the Decision is wrong and should be reconsidered and changed to respond to Appellant's arguments and then allow said Petitions.

4 The Decision states:

"On May 5, 2003, applicant filed a Notice of Appeal appealing the final rejection made on January 30, 2003.

On July 3, 2003, applicant filed an Appeal Brief. .... On September 25, 2003 a second Appeal Brief was filed, dated by the applicant as September 17, 2003. .... On November 26, 2003, the first petition was filed petitioning the November 18, 2003 letter. On December 2, 2003, applicant filed "Appellant's Notice To The Board Of False Statements In An Office Communication Dated 11/18/03". On January 22, 2004, the examiner treated the letter as an attempt to correct the defective Appeal Brief. The examiner mailed a letter indicating that the Appeal Brief remained defective. On February 3, 2004, applicant petitioned the letter mailed on January 22, 2004. On February 5, 2004, applicant filed "Appellant's Notice To The Board Of False Statements In An Office Communication Dated 1/22/04".

[Decision of May 2005]

There are several problems with this summary by the Office. First, the Office is not fully correct either by number of documents or the dates of said documents.

i **Appellant submitted (in triplicate) Appeal Brief dated June 29, 2003.**

ii Appellant received a communication from the office dated 8/28/03 referred to as the "Communication of 8/28/03" or the "first Office Communication".

iii **Appellant submitted (in triplicate) Appeal Brief dated Sept. 17, 2003.**

iv Appellant submitted "Notice of Compliance by Appellant" which was dated Sept. 17, 2003.

v Appellant received a communication from the office dated November 18, 2003, referred to as the "Communication of 11/18/03" or the "second Office Communication".

vi On November 24, 2003, Appellant filed a Petition to the Commissioner pursuant to 37 C.F.R. 1.181 because there were at least a dozen errors in the Communication of 11/18/03 by Mr. Carone.

vii **Appellant submitted (in triplicate) Appeal Brief dated January 28, 2004.**

viii On January 28, 2004, Appellant filed a Petition to the Commissioner pursuant to 37 C.F.R. 1.181 to correct the situation with respect to the recent OFFICE Communication dated 1/22/04, stamped by Michael Carone, which substantively ignores the Appellant's Communication dated November 24, 2003.

Second, most importantly, it is noted that the statement "*On January 22, 2004, the examiner treated the letter as an attempt to correct the defective Appeal Brief*" is incredible because it utterly ignores the submitted Appeal Brief dated January 28, 2004.

Third, as discussed in the Swartz Declaration and elsewhere, the Applicant (now Appellant) has prepared three Appeal Briefs because of several erroneous and minimal complaints made by the Examiner. This has resulted because the Applicant's invention has been perceived by the Patent Office as being in the field of "cold fusion", the Applicant (now Appellant) has been the recipient of a brutal harassment [Exhibit "B", Exhibit "C"]. Documents are ignored routinely by the Examiner and his Supervisor, meaning that the Office has FAILED to fulfill its Obligations. Declarations are ignored routinely by the Examiner and his Supervisor, meaning that the Office has FAILED to fulfill its Obligations.

5. The Decision states:

"As a formal matter, applicant was given an extendable one-month period for response on August 29, 2003. ... A review of the file and facts indicated above reveals that applicant response filed on September 25, 2003 was timely. "

[Decision of May 2005]

The Examiner is not fully correct. The Applicant ALSO satisfied all the problems and demonstrated that the "problems" purported by the Office were nonexistent, trivial, and made only to harass the Appellant and obstruct justice (to prevent the Appeal Board from every hearing from a litigant that already paid the fee).

6. The Decision states:

"There have been no further Appeal Briefs filed."

Decision of May 2005]

The Examiner is incorrect. Most importantly, it is noted that the statement "On January 22, 2004, the examiner treated the letter as an attempt to correct the defective Appeal Brief" ignores the submitted Appeal Brief dated January 28, 2004. The Appellant is now entitled to a copy of the Docket because the Office has a history of Evidence spoliage [odiously even from the Federal Court in the above-entitled invention from which the present invention comes].

7. The Decision states:

"Therefore, applicant's application will be considered abandoned as of September 30, 2003 unless this decision determines that the examiners action of November 18, 2003 was completely in error. "

[Decision of May 2005]

The Examiner is incorrect. The Office's complaints were ALL addressed. This is unfair because it has also been shown that many of the complaints were errors by the Office. This is egregious because the Office's comment appears to suggest or require the

possible need for criminal or civil actions against those within the Office who obstruct justice under color of law as they usurp the US Constitution and the Order of the US Congress.

8. The Decision states:

"Additionally, it is recognized that Appellant is a pro-se applicant. MPEP 1206 states: "An exception to the requirement that all the items specified in 37 CFR 1. 192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant... will be accepted as long as it substantially complies with the requirements of items (1), (2), and (8). If the brief of apro se appellant is accepted, it will be presumed that all the claims of a rejected group of claims stand or fall together unless an argument is included in the brief that presents reasons as to why the appellant considers one or more of the claims in the rejected group to be separately patentable from the other claims in the group."

[Decision of May 2005]

The Examiner is incorrect with this segue for several reasons. First, the Appellant DID list in the Brief as to why certain claims do not stand or fall together. Second, it is the OFFICE which has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communications from the Applicant to the Examiner. For example, in said second Communication, the Applicant took the time to respond to the Examiner and wrote the following comments.

"The Office's notification states, "d. The statement on Grouping of Claims is improper because it includes arguments as to why certain claims do not stand or fall together. These arguments should be in the Argument section."

In fact, as stated to the Office in said Notice, the Appellant did correct it. Furthermore, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101, as said Notice stated on page 5. The meticulous effort of the Appellant was again ignored. The Notice was ignored -- despite the fact that it was discussed with specificity on page 5 in said Notice of Sept. 17, 2003. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office to this matter. Instead, the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111. Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra). Fourth, Appellant respectfully disputes this because each and every

matter of the invention of which this invention is a divisional was already before the Board. The Appellant has a right to be concise, clear and accurate about what is before the Board. Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate. Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, page 5. Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office."

["Appellant's Notice to the Board", dated Nov., 18, 2003]

Third, attention is now directed to the fact that said comments in Applicant's Communications have simply been ignored by the Examiner and Office. The Examiner has again failed to cite Applicant's arguments, and has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

Fourth, attention is directed to the FACT that the Examiner was requested to substantively answer and respond with specificity. The Applicant stated in the January Communication,

".... the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,

" the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111."

NOTA BENE: Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. However, nowhere in the present Office Communication is there a rebuttal of even ONE (1) of the Applicant's statements which proved the Examiner wrong. Instead, Applicant's reply is ignored. As is stated in the Swartz Declaration,

"2. In response to my Petitions of November 26, 2003 and February 4, 2004 I have received a Decision dated May 9, stamped May 10, and initialled 11, 2005, which has unfairly and erroneously ignored my submitted arguments in pleadings AND my submitted Appeal Briefs. Said Decision ignores, in addition to other aspects of my submitted Appeal Brief, page 10 in the Appeal Brief in the ISSUES section, and then

page 11 and thereafter of the Argument section for 35 U.S.C. 112 (first paragraph), and then page 62 and thereafter of the Argument section for 35 U.S.C. 112 (second paragraph), and then page 72 and thereafter of the Argument section for 35 U.S.C. 102, and then page 90 and thereafter of the Argument section for 35 U.S.C. 103, and then page 111 and thereafter of the Argument section for 35 U.S.C. 101."

9. The Decision states:

"There are no issues in this petition with respect to items 1 and 2. For the record, item 8 is outlined below: (8) Argument. The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the basis therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate heading.

(i) For each rejection under 35 U.S.C. 112,first paragraph, the argument shall specify the ...For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section, the argument shall specfy the errors in the rejection and the specf Ic limitations in the rejected claims, if appropriate, or other reasons, which cause the rejection to he in error.

In light of the above, it has been determined that the petition with respect to most of the issue are hereby granted, giving consideration to appellants pro-se status. The exception being the issues with respect to section 8 of this rule. "

[Decision of May 2005]

The Examiner is incorrect. These were listed in the brief. Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. However, nowhere in the present Office Communication is there a rebuttal of even ONE (1) of the Applicant's statements which proved the Examiner wrong.

Most importantly, the Appellant DID list in the Brief as to why all of these required arguments.

Attention is now directed to where it was corrected on page 10 in the Appeal Brief in the ISSUES section, and then on page 11 of the Argument section for 35 U.S.C. 112 (first paragraph), and then on page 62 of the Argument section for 35 U.S.C. 112 (second paragraph), and then on page 72 of the Argument section for 35 U.S.C. 102, and then on page 90 of the Argument section for 35 U.S.C. 103, and then on page 111 of the Argument section for 35 U.S.C. 101.

The meticulous effort of the Appellant was again ignored. Where is the Office's response? There is no honest or substantive response by the Office, and no accountability in the Office to this matter. Instead, the Decision with impropriety ignores Appellant's missives and Appeal Briefs, with the Office meanly and myopically ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111.

NOTA BENE: It is the OFFICE which has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail in the previous Communications from the Applicant to the Examiner. Attention is now directed to the fact that said comments in Applicant's Appeal Briefs have simply been ignored by the Examiner and Office.

THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments. THIS IS UNFAIR because the Examiner has again failed to cite Applicant's arguments. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely.

Attention is directed to the FACT that the Examiner was requested to substantively answer and respond with specificity. The Applicant stated in the January Communication,

> **".... the Examiner has apparently ignored the Office rules, and expectations of reasonable people. Therefore, given the above, the Applicant hereby again requests to know the substantive precise reason, scientific basis, or authority which allows the Examiner to dismiss this Argument by the Applicant without citation, analysis, or substantive coherent response. Specifically, the Applicant hereby requests to know the basis which allows the Examiner to dismiss the Argument that,**
>
> **" the Communication of 11/18/03, the second Office Communication once again has a false statement this time ignoring pleadings in the Appeal Brief in the ISSUES section on page 10, and in the Argument section for 35 U.S.C. 112 (first paragraph) on page 11, and in the Argument section for 35 U.S.C. 112 (second paragraph) on page 62, and in the Argument section for 35 U.S.C. 102 on page 72, and in the Argument section for 35 U.S.C. 103 on page 90, and in the Argument section for 35 U.S.C. 101 on page 111."**

10. The Decision states:

"With respect to letter mailed November 18, 2003, the examiner's position is that the Argument section does not address the new matter rejection under section 9 of the Final Office action. The text of that section in the final rejection is as follows: "Claims 8, 10, 13, 24, 26 and 28 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new subject matter and reasons why they are such are discussed in section 5 above." Appellant's addresses this issue at pages 10 and 11 of the petition. Appellant states that the Office is wrong for "at least seven reasons". "First, Appellant respectfully disputes this because the purported "new matter rejection" was identified and discussed on pages 3 and 4 in said Notice." This argument cannot be addressed as the intent of this statement is unclear. "

[Decision of May 2005]

The Examiner is incorrect for several reasons. First, the Appellant did address the "new matter rejection". The purported "new matter rejection" was identified and discussed on pages 3 and 4 by in Appellant's Notice where the Office was directed to the Appeal Brief to STOP the Examiner's disingenuous statements. The Appellant's Notice has been ignored -- despite the fact that it was discussed with specificity on pages 3 and 4 in said Notice of Sept. 17, 2003 and on pages 68 through 78 in the Appeal Brief.

In fact, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief of Sept. 17, 2003.. In fact, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief of January 28, 2004. BOTH discussed the purported "new matter rejection" beginning at the bottom of page 58.

NOTA BENE: Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. The meticulous effort of the Appellant has again been ignored. The Applicant's points were persuasive and based upon logic.

NOTA BENE: It is the OFFICE which has been unresponsive to Applicant's Appeal Brief AGAIN, purporting the absence of arguments even though they were fully discussed in significant detail in said Brief. THIS IS UNFAIR because the Office and Examiner have again failed to READ the duly-submitted Appeal Brief and send it on to the Board. THIS IS IMPROPRIETY. THIS IS UNFAIR because the Office and Examiner have again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely - but instead has chosen obstruction of justice and other signs of abuse toward the Applicant.

11. The Decision states:

"Second, Appellant respectfully disputes this because Appellant addressed this matter in the response to the Office in his "Notice of Compliance by Appellant", dated Sep. 17, 2003." In this argument, Appellant refers to pages 68-78 of the Appeal Brief A review of this part of the Brief, however failed to reveal any argument with respect to these claims or the new matter issue. Additionally, a review of the Brief section with respect to the rejections under 35 USC 112 failed to reveal any argument with respect to this issue. "

[Decision of May 2005]

The Examiner is incorrect. In fact, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief of Sept. 17, 2003.. In fact, to prove this with specificity, attention of the Court, Board, and Commissioner is now directed to where it was discussed on pages 68 through 78 in the Appeal Brief of January 28, 2004. BOTH discussed the purported "new matter rejection" beginning at the bottom of page 58.

12. The Decision states:

"Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra)" In response, this issue cannot be addressed in that appellant has not provided any facts or evidence to support this conclusion with respect to the new matter issue at hand. "

[Decision of May 2005]

The Examiner is incorrect. These were listed with full arguments in Appellant's submitted "Notice of Compliance by Appellant" which was dated Sept. 17, 2003. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been simply ignored by the Examiner and Office. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

These were listed with full arguments in Appellant's November 24, 2003 Petition to the Commissioner. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been simply been ignored by the Examiner and Office. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

These were listed with full arguments in Appellant's January 28, 2004 Petition to the Commissioner. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been ignored by the Examiner and Office.

THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. However, nowhere in the present Office Communication is there a rebuttal of even ONE (1) of the Applicant's statements which proved the Examiner wrong. Instead, Applicant's reply is ignored. The Examiner has not responded to Applicant's arguments. The Applicant's arguments have not been fully considered, and instead have been ignored substantively. Therefore it is impossible to tell how the Examiner weighed any of Applicant's arguments. There is absolutely no way for the Applicant to present the Examiner's reasons for rejection to the Board of Appeals.

13. The Decision states:

"Fourth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate". In response, this argument has no bearing on whether or not Appellant addressed the new matter rejection of issue."

[Decision of May 2005]

The Examiner is incorrect. There is bearing the prism of impropriety and disingenuity of the Office. With America at War, the Office declared "war" on the Appellant and any other American inventor trying to improve energy production and utilization. Given Exhibits "B" and "C" this is important to the security of the United States, and should be important to the Commissioner.

14. The Decision states:

"Fifth, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra)". In response, this issue cannot be addressed in that appellant has not provided any facts or evidence to support this conclusion with respect to the new matter issue at hand. "

[Decision of May 2005]

The Examiner is incorrect. These were listed in the missives with specificity. Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points. It is the OFFICE which has been unresponsive to Applicant's arguments even though they were fully discussed in significant detail. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments. THIS IS UNFAIR because the

Examiner has again failed to cite Applicant's arguments. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. Sanctions are due to the Examiner and his Supervisor for disingenuity, obstructing civil rights, and then obstructing justice by denying an Appeal.

15. The Decision states:

"Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 3 and 4." In response, this argument is confusing because the Sept. 17, 2003 letter was sent by the appellant and not the Office. Therefore the Office would not have addressed this argument in that paper. The Office, however, has raised this issue in response to the Brief of September 17, 2003 (as dated by the applicant).

"Seventh, Appellant notes that this confabulation suggests obstruction of justice under color of law by the Office." In response, this argument is without merit or bases. "

[Decision of May 2005]

The Examiner is incorrect and feigns coyness with "tongue firmly in cheek". The fact is: The Office has ignored what was in the missives AND the Appeal Briefs. Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points. The Applicant's detailed substantive arguments were persuasive and based upon logic. Where is the Examiner's substantive response? The Examiner has not responded to Applicant's arguments. The Applicant's arguments have not been fully considered, and instead have been ignored substantively. Therefore it is impossible to tell how the Examiner weighed any of Applicant's arguments. There is absolutely no way for the Applicant to present the Examiner's reasons for rejection to the Board of Appeals.

The Examiner is incorrect because these were listed with full arguments in Appellant's submitted "Notice of Compliance by Appellant" which was dated Sept. 17, 2003. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been ignored by the Examiner and Office. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

The Examiner is incorrect because these were listed with full arguments in Appellant's November 24, 2003 Petition to the Commissioner. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been ignored by the Examiner and Office. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

The Examiner is incorrect because these were listed with full arguments in Appellant's January 28, 2004 Petition to the Commissioner. It is the OFFICE which has been unresponsive to Applicant's arguments in said missive. Applicant's Appeal arguments have been ignored by the Examiner and Office. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments.

16. The Decision states:

"In conclusion, the examiner was correct in holding the Appeal Brief received by the Office on September 25, 2003 as non-compliant with 37 CFR I .192(c)(8). "

[Decision of May 2005]

The Office is incorrect. The examiner was incorrect in purporting that the Appeal Brief received by the Office on September 25, 2003 was "non-compliant with 37 CFR I .192(c)(8)". The Appeal Brief received September 25, 2003 was compliant. Second, the ignored third Appeal Brief received January 28, 2004 was compliant. Third, the Office has also ignored what was in the missives AND the Appeal Briefs.

Pursuant to In re Oetiker, Applicant did respond in full to each of the Examiner's points, in considerable detail. The Examiner has not responded to Applicant's arguments. The Applicant's arguments have not been fully considered, and instead have been ignored substantively. Therefore it is impossible to tell how the Examiner weighed any of Applicant's arguments. There is absolutely no way for the Applicant to present the Examiner's reasons for rejection to the Board of Appeals. THIS IS UNFAIR because it is impossible to tell how the Examiner weighed Applicant's arguments. THIS IS UNFAIR because the Examiner has again failed to cite Applicant's arguments. THIS IS UNFAIR because the Examiner has again failed to discuss Applicant's arguments, or rebut Applicant's arguments precisely.

17. For the above reasons, documented by the record, said Decision has unfairly, erroneously and with impropriety denied Appellant's Petitions of November 26, 2003 and February 4, 2004.

For the above reasons, documented by the record, said Decision unreasonably ignores three (3) duly submitted Appeal Briefs, two of Appellant's Petitions with Declarations supporting said Petitions

For the above reasons, documented by the record, said Decision ignores the normal uniform standard of review.

For the above reasons, documented by the record, said Decision is not supported by the Law or the record, and therefore, the Decision is wrong, and it is therefore reasonably and respectfully requested that it should be reconsidered and changed to allow said Petitions.

18. The Commissioner should act because The US Patent Office hase been shown to be disingenuous as forces within it work against the security of the USA, the US Constitution and the directive of Congress. As the most recent salient proof:

> **"Still, I was struck by the discomfort of Mr. Godici as he struggled to explain why the blanket exclusion of cold fusion remains in effect when during the intervening 16 years since its adoption, certainly some better understandings and approaches to cold fusion and its related technologies must have occurred which, ordinarily and but for the ban, would meet the new and useful criteria for a patent, or constitute what I'll call, a "non-obvious improvement of existing technology." Of course, this was not the exact question put to him, but it was the sum and substance of the "conversation" (more formally known as testimony) had about Mr. Behrend's role and his automatic REJECTED stamp. None of Mr. Godici's answers was totally satisfactory, and the urge, not well restrained, to say, if not scream: "Hold it a minute! Isn't time to go back to the earlier days of the PTO when inventors had to produce working models of their devices? It can't it be an applicant's option, and while the days of obvious and easily visible confirmation of claim's have come and gone, the PTO has the National Institute of Standards and Technology to test and verify or reject claims of subtle, hard to grasp accomplishments. And, if the NIST lacks that capability, there are DoE and scores of DoD labs that in collaboration with the PTO could undertake the task."**
>
> [IN THE MATTER OF ARBITRATION Between Patent Office Professional Association and US Department of Commerce, Patent and Trademark Office, DECISION AND AWARD ON THE MERITS, 30th day of July, 2005, Robert T. Moore, Arbitrator]

19. The Commissioner should act on this Petition because the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

20. The Commissioner should act on this Petition and use supervisory authority to immediately reconsider and allow the Appellant's Petitions of November 26, 2003 and February 4, 2004.

The Commissioner should use supervisory authority to recuse Michael J. Carone and Donald T. Hajec so as to remove the appearance of impropriety and the possibility of obstructing justice. Under the doctrine of *respondeat superior*, the Commissioner ought to reexamine the hostility of the Office against Appellant.

The Commissioner should render unto the Applicant clean and readable copies of the Docket immediately because in the prism of past docket spoliage and the present egregious decision there would otherwise be the appearance of impropriety.

The Commissioner should render unto the Board the (ignored third) Appeal Brief received January 28, 2004.

Respectfully submitted,

Mitchell Swartz, Appellant
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

October 14, 2005

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
The Commissioner for Patents
Alexandria, VA 22313-1450l
on the date below.
Thank you.

Sincerely,

October 14, 2005

M.R. Swartz

UNITED STATES PATENT AND TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAY 10 2005

Mitchell R. Swartz ScD, MD, EE
16 Pembroke Road
Weston, MA 02493

May 9, 2005

EXHIBIT "A"

In re: Mitchell R. Swartz
Serial No: 09/748,691
Filed: December 26, 2000

Decision on Petition under
37 CFR 1.181

For: Method to Control Reactions Involving Isotopic Fuel Within a Material Using Orthogonal Electric-Fields

This decision addresses the following petition filed by applicant:

- The petition filed on November 26, 2003 under 35 USC 181 petitioning the letter mailed on November 18, 2003 citing defects in applicants Appeal Brief filed September 25, 2003.

- The petition filed on February 3, 2004 under 35 USC 181 petitioning the letter mailed on January 22, 2004 citing defects applicants Appeal Brief filed on December 2, 2004.

RELEVANT HISTORY

On May 5, 2003, applicant filed a Notice of Appeal appealing the final rejection made on January 30, 2003.

On July 3, 2003, applicant filed an Appeal Brief.

On August 29, 2003, a Notice of Non-Compliance with 37 CFR 1.192(c) was mailed to the applicant. The Notice indicated that the status of the amendments was improper, the summary of the invention was improper, the scope of the issues was improper, the grouping of claims was improper, and the arguments section was incomplete. A detailed discussion of these issues can be found in the Notice. Applicant was given a one-month extendable time period to correct the defects.

On September 25, 2003 a second Appeal Brief was filed, dated by the applicant as September 17, 2003.

On November 18, 2003 a letter was mailed to the applicant indicating that the second Appeal Brief remained defective. The letter alleged that the summary of the invention

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Memorandum

DATE June 5, 1989

TO All Group Directors

FROM Kenneth L. Cage, Director
Group 220

SUBJECT Cold Fusion Applications

Although the media attention relating to cold fusion has dimished, we are just now beginning to see a large number of applications relating to this subject. Although we are attempting to identify all of these applications in the pre-examination screening process, there is a possibility that a few applications may slip through without being identified. Please have your examiners be on the look out for any application that may relate to cold fusion. Some of the areas where a cold fusion application might be filed are:

EXHIBIT "B"

Fuel Cells	class 429
Electrochemistry	class 204
Power plant	class 60
Radiant energy	class 250
Helium production	class 423

If one of your examiners should receive an application relating to cold fusion, he or she should check to make sure the words "COLD FUSION" are stamped on the file wrapper. If not, the application should be referred to Licensing and Review, CP4-10C23 for marking. Also, any action on one of these applications should be routed through the Group 220 Director's Office and the Office of the Assistant Commissioner for Patents prior to mailing.

Thank you for your cooperation. Should have any questions, please contact me.

IN THE MATTER OF ARBITRATION

Between

Patent Office Professional Association

FMCS Case No. 00-01666
Employee Termination

and

Robert T. Moore
Arbitrator

US Department of Commerce,
Patent and Trademark Office

EXHIBIT "C"

DECISION AND AWARD ON THE MERITS

Appearances:

For the Patent Office Professional Association (POPA or Union):

Raymond B. Johnson — POPA Representative
David L. Robertson — POPA Representative

For the US Patent and Trademark Office (Agency, Management or PTO):

William Way, Esq. — Associate Counsel, Office of General Counsel, PTO

Issue Presented

The parties did not stipulate to an issue, and while the evidence raised important sub-issues which will be addressed, the principal issue is found to be:

> Whether the Agency's removal of the grievant from federal service was "for such cause as will promote the efficiency of the service," as prescribed by 5 USC §7513 (a), and was otherwise in compliance with the laws, rules and regulations of the United States and provisions of the parties' Labor Agreement, and if not what should the remedy be?

RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS
INVOLVING ISOTOPIC FUEL
WITHIN A MATERIAL USING
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691
Filed: 12/26/2000
This is a division of Serial no. 07/ 760,970
Filed: 09/17/1991

Group Art Unit: 3641
Examiner: Palabrica, R.J.

October 14, 2005

The Commissioner for Patents
Alexandria, VA 22313-1450l

DECLARATION OF DR. MITCHELL SWARTZ SUPPORTING PETITION TO THE COMMISSIONER

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. I have a background in electrical engineering, material science, electrochemistry, and medicine, and have worked in this field for more than sixteen years, and have worked on experimental projects at the Massachusetts Institute of Technology, Massachusetts General Hospital and elsewhere since the '60s.

2. In response to my Petitions of November 26, 2003 and February 4, 2004 I have received a Decision dated May 9, stamped May 10, and initialled May 11, 2005, which has unfairly and erroneously ignored my submitted arguments in pleadings AND my submitted Appeal Briefs.

3. Said Decision ignores, in addition to other aspects of my submitted Appeal Brief, page 10 in the Appeal Brief in the ISSUES section, and then page 11 and thereafter of the Argument section for 35 U.S.C. 112 (first paragraph), and then page 62 and thereafter of the Argument section for 35 U.S.C. 112 (second paragraph), and then page 72 and thereafter of the Argument section for 35 U.S.C. 102, and then page 90 and thereafter of the Argument section for 35 U.S.C. 103, and then page 111 and thereafter of the Argument section for 35 U.S.C. 101.

Respectfully,

Mitchell Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:
October 14, 2005

Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481